United Nations CAT/C/55/2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
4 September 2015

Original: English

Committee against Torture

Guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee against Torture under articles 13, 19, 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

General provisions

1. Further to the establishment of a mechanism to prevent, monitor and follow up cases of reprisal against civil society organizations, human rights defenders, victims and witnesses engaging with the human rights treaty body system and the designation of rapporteurs on reprisals (see A/69/44, para. 25) and in the light of the decision taken by the Chairs of the treaty bodies at their twenty-sixth meeting (see A/69/285, para. 111), the Committee against Torture adopts the present guidelines on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee under articles 13, 19, 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. In handling allegations of reprisals, the Committee will follow the Guidelines against Intimidation or Reprisals ("San José Guidelines") adopted by the Chairs of the human rights treaty bodies at their twenty-seventh meeting, held in San José from 22 to 26 June 2015 (see HRI/MC/2015/6).

Article 13

3. The Committee wishes to recall that, pursuant to article 13 of the Convention, each State party shall take steps to ensure that the complainant and the witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint made or any evidence given. In the context of the Committee's operation, reprisals can occur in Geneva, in the home country of the person or organization concerned or elsewhere.

4. Reprisals constitute a form of cruel treatment or punishment under article 16 of the Convention and may amount to torture in certain circumstances.

5. When information related to alleged reprisals comes to the attention of the Committee, whether during or between its sessions, which are held in Geneva, the

* Adopted by the Committee at its fifty-fifth session (27 July-14 August 2015).

GE.15-14999(E)

Please recycle

Committee should be prepared to review and respond to them. For this purpose, it shall appoint at least one rapporteur and the secretariat shall designate focal points from among its staff members.

Article 19

6. The Rapporteur on reprisals, with the assistance of the secretariat, should:

(a) Receive complaints and information regarding reprisals, including through the secretariat;

(b) Inform the secretariat about any allegations received directly, irrespective of the source of the allegation;

(c) Encourage the submission of information in written form; if the complainant cannot provide written submissions, he or she may transmit information orally to the Rapporteur or the secretariat and the Rapporteur will make a note of the conversation;

(d) On the basis of available information, make a preliminary assessment of the threat; information on allegations that relate to acts or threats of reprisal in a State party to the Convention should be verified by referring to reliable sources, including the secretariat, relevant non-governmental organizations and the media;

(e) Where relevant, inform and consult relevant mandate holders, including, when appropriate, the country rapporteurs of the Committee and of other treaty bodies, on each case;

(f) Liaise with the secretariat, which will maintain a file of all relevant documentation;

(g) Act only with the agreement of the complainant; when he or she cannot be reached or express such agreement, his or her relatives and representatives should express agreement on his or her behalf;

(h) Prepare a recommendation for action;

(i) Monitor developments in the case through the secretariat.

7. All allegations shall be treated with the utmost confidentiality and in accordance with the principle of "do no harm".

8. Where the information is considered reliable and the preliminary assessment determines that there is a real threat or that a violation has been committed, the Rapporteur, in consultation with the Chair of the Committee, and, when possible, the country rapporteurs and the secretariat, will decide on the appropriate course of action, which may include the following steps:

(a) Communicate with the Permanent Representative of the State concerned, request information and recommend action to be taken;

(b) After having made contact with the Permanent Representative of the State concerned, issue a public statement condemning reprisals and requesting that victims be protected, and consider issuing a joint public statement with other relevant bodies and mandate holders;

(c) Inform other relevant bodies and officials, including mandate holders, other treaty bodies and relevant sectors of the secretariat, as appropriate;

(d) Inform the national human rights institution and the national preventive mechanism or mechanisms on the case, as appropriate.

9. Where the information is considered not reliable, the alleged victim should be informed that no further action will be taken at that stage.

Article 20

10. As a preliminary measure before the visit, the Committee should explicitly include the clause of non-retaliation in the official document containing the terms of reference of a visit to the State party under inquiry that the Committee usually sends to the State authorities, making direct reference to article 13 of the Convention.

11. In the standard questionnaire that is usually prepared for interviews with persons in places of detention during a mission of inquiry, a question should be included on whether the person or group interviewed would agree to establish contact (by e-mail, postal address or other means) with the Committee, through its secretariat. Establishing such willingness would make it possible rapidly to alert the Committee members concerned of an act or threat of reprisal.

12. Similarly, United Nations country teams, national human rights institutions, non-governmental organizations, lawyers and national preventive mechanisms, as appropriate, could be provided with a contact in the secretariat, so as rapidly to alert the Committee when cases of reprisals come to their knowledge.

13. It should be made clear to all concerned that any action on allegations of reprisals would take into account, as a matter of priority, the need to preserve the security of the person or persons threatened. No name of persons or places or any sensitive information will be disclosed if such information jeopardizes the security of the complainants, their representatives or witnesses. At the end of the mission, during their last meeting with the authorities of the State concerned, the Committee members conducting the inquiry should explain that they are keeping the contact information of those interviewed to ensure follow-up and update the information received during the visit, as necessary.

14. Doing so would signal to the authorities concerned that the Committee could receive information on cases of reprisals against those who have cooperated with it.

15. In certain cases, when the authorities concerned express criticism of those who have cooperated with the Committee, for instance by accusing them of providing false or politically motivated information, the Committee could state that it keeps the contact address of those who have cooperated with it so as to receive information on any kind of reprisal to which they might be subjected.

16. A registry with the identifying and other personal data of those who have cooperated with the Committee during an inquiry should be kept by the secretariat. This would make it possible to establish the "history" of those individuals or groups at risk of being subjected to reprisals.

17. The maintenance of such a registry would be particularly important for persons in places of detention interviewed by Committee members. Specific information, such as the date of a meeting with the Committee, as well as other information on treatment, the place of arrest and detention, the charges and the judicial decisions, should be collected on such persons.

18. No name or other information would be disclosed in the event that the security of the person concerned cannot be fully guaranteed. In no circumstance would the name of a minor be made public.

19. On the basis of experience developed during missions carried out under article 20, the ideal method to ascertain if the Committee's recommendations have been implemented

would be for the Committee to be authorized by the Government concerned to carry out a follow-up visit one or two years after the conclusion of the inquiry.

20. Moreover, the planning and acceptance by the State party concerned of a follow-up visit would enhance the level of protection of those who have cooperated with the Committee because the authorities concerned would be aware of the possibility that the Committee could be contacted directly by those cooperating with and, therefore, that no act or threat of reprisal could be hidden.

21. Finally, the Committee should notify the State party under inquiry that cases of sanctions being applied to persons who have cooperated with the Committee would be included in a summary account of the proceedings relating to the inquiry and be made public.

Article 22

22. As a preliminary measure to prevent reprisals against persons involved in the individual complaints procedure under article 22 of the Convention, the Committee could notify the State party concerned not to bring pressure to bear on or threaten the author of a communication when the Committee requests interim protection measures. If the issue arises upon registration, it is up to the Special Rapporteur on new communications and interim measures to evaluate the situation and to decide whether to send such a warning. If the issue arises for a registered communication under the follow-up procedure, the Rapporteur on reprisals should evaluate the situation and decide on the course of action.

23. Similarly, representatives of complainants, such as lawyers, relatives or organizations, should be informed that the Rapporteur on reprisals could bring to the attention of the authorities of the State party concerned allegations of threats, acts of intimidation or other forms of reprisal and to approach representatives of the State party, as necessary, to make an official protest and ask for remedial action.

24. Similar action may be necessary also in cases of fear of reprisals. It appears that some complainants fear being subjected to reprisals simply for having submitted a complaint to the Committee.

25. This is even more evident in cases concerning article 3 of the Convention. The mere fact of requesting asylum because of an alleged risk of being tortured in the country of return may be perceived negatively by the authorities of that country and expose the complainant to reprisals if he or she is actually returned.

26. When there is a foreseeable, personal and real risk that a complainant who is about to be deported will be subjected to reprisals amounting to torture or other cruel, inhuman or degrading treatment or punishment in the country of deportation, the Committee considers that the principle of non-refoulement applies and will request the State party concerned to refrain from carrying out the deportation.